HOMESTAKE MINING CO.

IBLA 87-154 Decided September 23, 1988

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring three lode mining claims null and void ab initio. MMC-125446(SD), MMC-125447(SD), MMC-125449(SD).

Affirmed.

l. Mining Claims: Lands Subject to--Patents of Public Lands: Reservations

A patent for land within the Black Hills National Forest, which provides, in accordance with sec. 3 of the Act of June 11, 1906, as amended, ch. 3074, 34 Stat. 234 (1906), that all entries are subject to the lode mining laws of the United States, does not constitute a reser- vation of minerals to the United States, and a lode min-ing claim thereafter located on that land is null and void ab initio.

APPEARANCES: George E. Reeves, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Homestake Mining Company (Homestake) has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated October 31, 1986, declaring the RX-8, RX-9, and RX-11 lode mining claims, MMC-125446(SD), MMC-125447(SD), and MMC-125449(SD), null and void ab initio in their entirety.

Homestake located the mining claims on March 21, 1986, and filed copies of notices of location for recordation with BLM on April 10, 1986. In its October 1986 decision, BLM declared the mining claims null and void ab initio because the claims had been determined to be located entirely on land which had been patented, pursuant to patent No. 714017, issued on October 21, 1919, "without a reservation of minerals to the United States." Homestake has appealed from that BLM decision.

The record indicates that BLM determined the location of Homestake's three mining claims, using the descriptions in Homestake's notices of location, to be in the NE^ sec. 3, T. 2 N., R. 3 E., and the SE^ sec. 34, T. 3 N., R. 3 E., Black Hills Meridian, Lawrence County, South Dakota, within the Black Hills National Forest (formerly the Black Hills Forest

Reserve). Those lands, according to patent No. 714017, were patented, "pursuant to the Act of Congress of May 20, 1862, 'To Secure Homesteads to Actual Settlers on the Public Domain,' and the acts supplemental thereto, including the Act of June 11, 1906, [as amended, ch. 3074, 34 Stat. 233 (1906) (formerly codified at 16 U.S.C. || 506-509 (1958)) (repealed by sec- tion 4 of the Act of October 23, 1962, P.L. 87-869, 76 Stat. 1157 (1962)).]" See August H. Snyder, 1 IBLA 130 (1970). Section 1 of the Act of June 11, 1906, 34 Stat. 233 (1906), provided for the opening of agricultural lands within forest reserves to homestead settlement and entry. Section 3 of that Act provided in full:

> That all entries under this Act in the Black Hills Forest Reserve shall be subject to the quartz or lode mining laws of the United States, and the laws and regulations permitting the location, appropriation, and use of the waters within the said forest reserves for mining, irrigation, and other purposes; and no titles acquired to agricultural lands in said Black Hills Forest Reserve under this Act shall vest in the patentee any riparian rights to any stream or streams of flowing water within said reserve; and that such limitation of title shall be expressed in the patents for the lands covered by such entries. [1/]

34 Stat. 234 (1906).

In its statement of reasons for appeal (SOR), appellant states that mining claims may only be located on patented lands where there has been a reservation of minerals to the United States. It then contends that the language in section 3 of the Act of June 11, 1906, contained in patent No. 714017, and to which the patent stated the lands conveyed thereby were to be subject, constituted a reservation of minerals to the United States. Appellant argues that to hold otherwise would render the words "subject to" devoid of meaning. In support of its position that Congress intended to reserve minerals to the United States in patents under the Act of June 11, 1906, appellant refers to the legislative history of that Act. Appellant points to the following language in the applicable House and Senate reports, particularly the underscored language:

> It was found necessary to make some special provisions to meet the peculiar conditions in the Black Hills Forest Reserve. From a commercial standpoint this is at present the most important reserve in the system, as the receipts from the sale of timber from that reserve is larger than from all other reserves combined. This results from the fact that extensive gold mines are in con- stant operation there. Settlers have occupied the agricultural lands in the narrow valleys of that reserve for many years, and

1/ Patent No. 714017 quotes, with one exception, all of the language in section 3 of the Act of June 11, 1906, verbatim. The patent does not quote the last proviso which begins "and that such limitation of title."

> several hundred of these settlers have not been able to obtain titles to their homes under the present state of the law.
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> It is desirable from many standpoints that these settlers should own the lands they occupy, where such lands are valuable chiefly for agricultural purposes. At the same time no timber lands should be patented under the homestead law, and agricultural titles should not carry valuable mines nor interfere with the development of the mining industry, which is paramount in that particular reserve. This situation has been carefully considered and provided for in the present bill. [Emphasis added.]

H.R. Rep. No. 2900, 59th Cong., 1st Sess. 3 (1906), and S. Rep. No. 3291, 59th Cong., 1st Sess. 3 (1906). Appellant requests the Board to reverse the October 1986 BLM decision and conclude that the patented land was sub- ject to the location of lode mining claims at the time of the location of appellant's claims.

[l] The only question presented by this case is whether the language in patent No. 714017, taken from section 3 of the Act of June 11, 1906, to the effect that "all entries under [the] Act * * * shall be subject to the quartz or lode mining laws of the United States," constitutes a reservation of minerals to the United States. We conclude that it does not.

The critical fallacy in appellant's reasoning is that it construes the phrase "shall be subject to the quartz or lode mining laws of the United States" as applying to patents under the Act, rather than entries under the Act. Appellant states that patents under the Act contain the provision that the "lands patented were 'subject to the quartz or lode mining laws of the United States'" (SOR at 4). Appellant, however, has incorrectly substituted the words "lands patented" for the statutory words "all entries" quoted in patent No. 714017. Appellant's error is also attributable to its misreading of the language in the statute that "such limitation of title shall be expressed" in patents under the Act. See SOR at 4. Appellant apparently regards both of the first two provisos in section 3 of the Act of June 11, 1906, as constituting a "limitation of title." However, only the second proviso contains an express limitation on titles acquired under the Act, precluding the vesting of certain riparian rights. The first proviso, on the other hand, does not expressly limit titles acquired under the Act; rather it specifically applies to "entries." 2/ Thus, the language of section 3 of the Act of June 11, 1906, quoted in patent No. 714017, plainly states that "entries," not patents, under the Act shall be subject to the quartz or lode mining laws.

2/ This distinction was recognized, despite appellant's assertion to the contrary, in Bate, Mineral Exceptions and Reservations in Federal Public Land Patents, 17 Rocky Mt. Min. L. Inst. 325 (1972). In his article, Bate explained through the use of a table of public land laws and accompanying text that the Act of June 11, 1906, contained no mineral reservations in the statute itself, (Id. at 364, 380-81) and that it contained no reservations

From the earliest days of public land law there has been an impor-tant distinction between entries and patents. Chotard v. Pope, 25 U.S. (12 Wheat.) 376, 377-78 (1827). Congress maintained that distinction in the Act of June 11, 1906. Section l of the Act of June 11, 1906, pro-vided the Secretary of the Interior with authority to open forest reserve land, considered by the Secretary of Agriculture to be chiefly valuable for agriculture and suitable for entry, to entry under the homestead laws. That section also provided that, following the passage of 5 years from the date of settlement, an entryman was permitted to apply for a patent by submitting the required proof of residence and cultivation and fulfilling the other requirements for patent. See generally Regulations, 36 L.D. 30 (1907); Regulations, 49 L.D. 9 (1922) (codified at 43 CFR Part 170 (1939)).

In accordance with section 3 of the Act, land in the Black Hills Forest Reserve which had been entered, but not yet patented, under that Act would remain subject to the quartz or lode mining laws, including the location of quartz or lode mining claims. This was consistent with the general rule that an "entry * * * of public lands which is not so far perfected as to confer an equitable title or vested right, does not take the land included in such entry * * * out of the operation of the mining laws * * *." Porter v. Landrum, 31 L.D. 352, 353 (1902).

On the other hand, there is nothing in the statutory language that suggests that, once the land had been patented, it was to remain subject to the location of quartz or lode mining claims or that minerals were to be reserved to the United States. In Silver Buckle Mines, Inc., 84 IBLA 306, 308 (1985), we noted that the "first statute authorizing issuance of a patent with a mineral reservation was the Act of March 3, 1909, 35 Stat. 844, 30 U.S.C. | 81 (1982), which provided for the reservation of coal deposits in certain lands classified as being valuable for coal." (Emphasis in original.) See generally United States v. Union Oil Company of California, 549 F.2d 1271, 1275 (9th Cir.), cert. denied, 434 U.S. 930 (1977). Therein, we concluded that "[n]o mineral reservation could properly be applied to a patent issued prior to this date." Silver Buckle Mines, Inc., supra at 308.

In this case, patent No. 714017 was issued after March 3, 1909, but appellant claims a mineral reservation based on the 1906 Act. That Act may not serve as the basis for a mineral reservation in the patent. This is not to say that the patent could not have contained a reservation of minerals to the United States, incorporated pursuant to some other statutory authority in existence at the time of the patent (1919). See Lee E. Williamson, 48 IBLA 329 (1980). However, that reservation must have been

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fn. 2 (continued)
other than mineral (Id. at 365, 380-81). However, with respect to "reserva-tions other than mineral," he noted that there were "special reservations under this act as it applies to the Black Hills Forest Reserve" (Id. at 405 n.16). As noted supra, the limitation of title with respect to riparian rights was, in effect, a special nonmineral reservation.

expressed. There is no basis for inferring a mineral reservation where the patent was issued pursuant to statutory authority which predates congres- sional authorization for the reservation of minerals. Cf. Donald W. Hoar, 81 IBLA 74, 76 (1984) (only minerals "specifically mentioned" reserved).

Appellant, however, purports to find support for its position that patent No. 714017 contains a reservation of minerals to the United States in the legislative history of the Act. Appellant particularly relies on the previously quoted language in the House and Senate reports that "agri- cultural titles should not carry valuable mines." Appellant construes that phrase to mean that valuable mineral deposits, which are subject to loca-tion and patent under the general mining laws, are to be reserved in patents under the Act (SOR at 6). We do not agree with appellant's interpretation.

Although the term "valuable mines" might have meant actual working mines, Congress probably intended a broader interpretation. In Colorado Coal & Iron Co. v. United States, 123 U.S. 307, 327 (1887), the Supreme Court first stated that in previous decisions it had limited the term "known mines" to mean "at the time the rights of the purchaser accrued, there was upon the ground an actual and opened mine which had been worked or was capa-ble of being worked." However, it then expanded that term, which Congress had excluded from preemption entries, to mean mineral deposits "of such an extent and value as to make the land more valuable to be worked as a * * * mine, * * * than for merely agricultural purposes." Id. at 328. As such, a determination that land contained "known mines," within the context of the statutory exclusion, constituted a determination that the land was mineral, rather than agricultural, in character. See also United States v. Reed, 28 F. 482 (D. Or. 1886) (homestead entry). A similar construction of the term "valuable mines" in the House and Senate reports quoted herein appears justified. However, even a broad definition of that term does not further appellant's argument.

The reason is that there is no basis for construing the phrase "agricultural titles should not carry" to require that minerals be reserved to the United States in a patent under the Act. A construction consistent with the statutory language would be that patents under the Act should not convey title to land which contained actual mines or had, otherwise, been found to be mineral in character. Thus, the quoted language suggests more that "valuable mines" were to be excluded from any conveyance than that they were to be reserved to the United States.

We conclude that the proper interpretation to be given the language in the House and Senate reports relied upon by appellant is that patents to lands in the Black Hills Forest Reserve, issued under the Act of June 11, 1906, were not to encompass land which was mineral in character.

Such a construction accords with the prevailing practice regarding homestead laws and other agricultural public land laws at the time of the Act of June 11, 1906, of excluding lands determined to be mineral in character from patents under those laws, rather than of reserving minerals to the United States. United States v. Sweet, 245 U.S. 563, 567 (1918)

(referring to the Act of May 20, 1862); Burke v. Southern Pacific Railroad Co., 234 U.S. 669, 691 (1914); August F. Plachta, 88 IBLA 304 (1985). Thus, since the lands in question were patented in 1919, the implication is that they were determined to be not mineral in character. That they may have at a later date been found to contain valuable minerals does not affect the title conveyed. See Wyoming v. United States, 255 U.S. 489, 501 (1921); Deffeback v. Hawke, 115 U.S. 392, 404 (1885).

We, therefore, conclude that patent No. 714017, issued pursuant to the Act of June 11, 1906, did not contain a reservation of minerals to the United States. It is well established that mining claims located entirely on land patented without a reservation of minerals to the United States are null and void ab initio. Merrill G. Memmott, 100 IBLA 44 (1987); Ralph C. Memmott, 88 IBLA 363 (1985) (both involving patents issued pursuant to the Act of May 20, 1862). Accordingly, we conclude that BLM properly declared appellant's three lode mining claims null and void ab initio.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge